

Agenda Item: 16-18 Request to Remand 10 EHR 5508, House of Raeford Farms v. EMC to the N.C. Office of Administrative Hearings for Additional Fact Finding

Summary

This matter involves the assessment of civil penalties by the Division of Water Quality (now the Division of Water Resources) against House of Raeford Farms (HORF) for alleged discharges of waste and sludge into Cabin Creek in Duplin County, resulting in violations of HORF's non-discharge permit and violations of water quality standards. HORF filed a petition of contested case at the Office of Administrative Hearings (OAH) challenging the determination of noncompliance and the penalties assessed. The Administrative Law Judge (ALJ) recommended upholding one \$25,000.00 civil penalty, determining that the evidence supported one civil penalty for discharging waste in violation of the non-discharge permit, but that the Department erred in assessing two other penalties based on violations of water quality standards.

The EMC modified the ALJ's Recommended Decision to uphold both the civil penalty for discharge in violation of the non-discharge permit and the civil penalty for violating the water quality standard for settleable solids and sludge, for a total penalty assessment and investigative costs of \$50,905.30. HORF filed for judicial review of the EMC's decision, and the Superior Court affirmed the EMC's decision in part and reversed in part, adopting the ALJ's findings of fact, upholding the \$25,000.00 civil penalty for violation of the non-discharge permit, and reversing the EMC's decision upholding the second penalty assessment for violation of the water quality standard for settleable solids and sludge.

The EMC and DWQ appealed the portion of the Superior Court's judgment reversing the EMC's civil penalty for HORF's violation of the water quality standard for settleable solids and sludge. HORF filed a cross-appeal from other portions of the Superior Court's decision. The North Carolina Court of Appeals issued its unanimous opinion finding no error in the Superior Court's decision, but remanding to the EMC for further findings regarding HORF's actions, timeliness, and other factors set forth in N.C. Gen. Stat. §143B-282.1(b) to determine the amount of the penalty. The EMC and DWQ filed a Petition for Discretionary Review, which was denied by the North Carolina Supreme Court.

On remand from the Court of Appeals, the Superior Court remanded the matter to the EMC. HORF has requested that the EMC refer the case to OAH for additional fact-finding. The EMC and DWQ have agreed that the matter should be referred to OAH. The issues currently before the Commission are (1) whether to refer the matter to OAH and, if so, (2) whether to limit the referral and provide explicit instructions for the assigned ALJ regarding the findings needed to support the ALJ's recommendation on the amount of the civil penalty as supported by the statutory factors in N.C. Gen. Stat. §143B-282.1(b). If the EMC decides not to refer the matter to OAH, the EMC will be presented at the next meeting with the record in the matter so that the EMC can determine the record facts that support its decision on the amount of the civil penalty.